

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SOFIA GUERRA

Claimant

VS.

DOLLAR GENERAL CORP.

Respondent,
Self-Insured

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Docket No. 258,981

ORDER

Respondent appealed the October 10, 2000 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for an accident and low back injury that allegedly occurred on or about September 2, 2000. In the October 10, 2000 Order, which is the subject of this appeal, Judge Clark found claimant's accident was compensable and granted claimant's request for benefits. Respondent contends the Judge erred. It argues claimant is not credible and that she failed to prove that she injured her back at work.

The only issue before the Appeals Board on this review is whether claimant proved that she sustained personal injury by accident arising out of and in the course of employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. Claimant testified that on or about September 2, 2000, she felt a pain in her back while she was unpacking dinner plates and placing them on a shelf. Claimant also testified that later the same day she told her store manager, Virginia Gray, about the incident but that Ms. Gray ignored her. Claimant did not work the next day as she was scheduled to have the day off.

3. On September 4, 2000, claimant's sister took claimant to the Wesley Medical Center Emergency Room where she received treatment for severe back pain and tingling down her right leg. The document entitled ED Core Encounter Record from the September 4, 2000 emergency room records provides two histories of injury. The first history is that claimant's back pain began on Friday when claimant got home from work. The second history is that claimant injured her back at work on Saturday while lifting boxes. But the Emergency Department Report dated September 4, 2000, provides only one history of injury, as follows:

Patient is a 28-year-old female who works at Dollar General. Patient was lifting boxes yesterday. After she got home her back began to hurt. Complained of severe pain to the low back. She says she has some tingling down the right leg. . . .

4. The emergency room personnel gave claimant an off-work slip, which claimant's sister delivered to respondent. Within several days of the September 4, 2000 emergency room visit, claimant returned to respondent requesting medical treatment. At that time, respondent prepared an injury report.

5. On September 27, 2000, claimant saw Dr. Michael P. Estivo. According to Dr. Estivo's September 27, 2000 report, claimant told him that she injured her back on September 2, 2000, while working for respondent lifting a box of dinner plates.

6. The outcome of this proceeding hinges upon claimant's credibility. The Judge had the opportunity to observe claimant testify and to assess her demeanor. Judge Clark found claimant a credible witness as the Judge granted her benefits despite conflicting testimony from Ms. Gray and a coworker, Amenah Beruni, and despite the various medical histories. In this instance, the Appeals Board gives some deference to the Judge's determination of claimant's credibility. Therefore, at this stage of the proceeding, the Board finds that claimant injured her back while working for respondent on or about September 2, 2000. Because the back injury arose out of and in the course of claimant's employment with respondent, claimant is entitled to receive workers compensation benefits.

7. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full presentation of the facts.¹

WHEREFORE, the Appeals Board affirms the October 10, 2000 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

¹ K.S.A. 1999 Supp. 44-534a(a)(2).

Dated this ____ day of December 2000.

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Kristine A. Purvis, Kansas City, MO
John D. Clark, Administrative Law Judge
Philip S. Harness, Director